UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/69
4 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Items 9, 11 and 17 (b) of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

CIVIL AND POLITICAL RIGHTS

PROMOTION AND PROTECTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[27 January 1999]

GE.99-11154 (E)

Protecting human rights defenders: towards full implementation of the "Declaration on Human Rights Defenders"

1. The Lawyers Committee for Human Rights welcomes the adoption of the Declaration on Human Rights Defenders, adopted by the General Assembly by its resolution 53/144 of 9 December 1998 under the formal name "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", as a crucial step towards better protection of human rights defenders. By reaffirming that everyone has the right to promote and protect human rights, alone and with others, domestically and internationally, the Declaration responds to an important need for fuller recognition of the work and rights of human rights defenders. Precisely because of their critical role in promoting human rights awareness and debate on the national and international levels, many human rights defenders still find their rights flagrantly violated by repressive Governments.

Physical violence against human rights defenders

2. In recent years, the number of reported attacks on human rights defenders has increased dramatically. In his 1998 report to the Commission on Human Rights (E/CN.4/1998/68 and Corr.1), the Special Rapporteur on extrajudicial, summary or arbitrary executions reported that in 1997 he had sent 45 appeals (31 urgent) to Governments citing threats to the lives of human rights defenders. Attacks on human rights defenders frequently include intimidation and harassment, arbitrary arrest and detention, extrajudicial executions, disappearances, torture, and other forms of physical violence.

3. Direct violent attacks and harassment of human rights NGOs continues to be a problem in Mexico. Between 1995 and 1997, more than 100 human rights advocates received death threats and/or were subjected to harassment or violence in connection with their work.

4. In Egypt, following an investigation of widespread human rights violations committed by police, the Egyptian Organization for Human Rights (EOHR) published a report on 28 September which documents evidence of hundreds of arbitrary arrests and widespread torture. Hafez Abu Se'da, the Secretary-General of the EOHR, was detained on 1 December 1998 for questioning, and held incommunicado for five days before being released on bail. Mustafa Zidan, a lawyer and the author of the report, was arrested on 6 December 1998 and released on bail three days later. Both Mr. Abu Se'da and Mr. Zidan were charged with "dissemination abroad of false information harmful to Egypt's national interests".

5. In Tunisia, Khemais Ksila, Vice-President of the Tunisian League for Human Rights (LTDH), was arrested on 29 September 1997 after launching a hunger strike at the LTDH headquarters in Tunis and issuing a statement critical of the Government's intolerance of dissent and the harassment he had endured personally. On 11 February 1998, Mr. Ksila was fined 1,200 Tunisian dinars (approx. $1,100) and sentenced to three years in prison. The Government convicted him under articles 44, 49, 50 and 51 of the Press Code

and article 32 of the Penal Code of "defaming public order and the authorities, spreading false information of a nature to disturb public order, and inciting citizens to violate the laws of the country".

6. The "Declaration on Human Rights Defenders" reiterates the overall legitimacy of human rights activities, including the voicing of criticism and the publication of human rights information, as well as the obligation of States to take all necessary measures to effectively protect human rights defenders from violence and arbitrary action.

Repression of human rights defenders through national law

7. Many human rights defenders are confronted with other forms of repression, through domestic legislation. National laws and regulations frequently infringe upon the right to freedom of association by imposing onerous or arbitrary registration procedures or discriminatory restrictions on the right to obtain funding for human rights activities - particularly from outside the country. Other forms of legal restriction include denial of freedom of movement and assembly, and crippling limitations on human rights publications.

8. In Cambodia, attempts have been made to introduce a restrictive new law ("Draft Law on NGOs and Associations") which would allow for unacceptable government interference with the internal structure of NGOs and associations, as well as with their solicitation of funds, prohibiting foreign assistance. The draft law also envisages a burdensome registration regime with disproportionate penalties.

9. Legal protections for human rights defenders in some of the countries of the former Soviet Union - notably Azerbaijan, Belarus and Uzbekistan - are inadequate to allow advocacy NGOs to exercise fully their right to freedom of association. Current draft laws affecting NGO work cause confusion in practice about what regulations apply, and existing laws and administrative procedures are often so complex and mutually contradictory that they invite arbitrary barriers to free exercise of the right to freedom of association. The Governments of Azerbaijan, Belarus and Uzbekistan have arbitrarily denied applicant groups registration or stripped them of legally acquired registration which profoundly weakens their ability to work freely.

10. The Mexican Government has also developed legal restrictions on the rights of human rights NGOs. In particular, Mexico has adopted aggressive legal measures relating to the interaction of human rights NGOs with their foreign counterparts. The Government has sought to limit international financial donations to human rights NGOs that appear discriminatory: human rights groups are subject to restrictions that other non-governmental organizations are not. In an attempt to control the local activities of human rights NGOs, several Mexican states have promoted legislation providing for restrictive registration requirements and extensive governmental oversight mechanisms. Similar legislation has been proposed at the federal level. Participation in these registration and oversight regimes is mandatory in some cases and in others a prerequisite to receiving certain benefits, such as tax

exemptions. In all cases, the degree of oversight involved is excessive in proportion to the legitimate necessity of managing and supervising the benefits offered.

11. These types of restriction are irreconcilable with the letter and the spirit of the "Declaration on Human Rights Defenders". The Declaration affirms that everyone has the right to promote and protect human rights, "individually and in association with others", at the national and international levels. Rather than using national law to restrict the ability of human rights defenders to carry out their work, States should support and protect their rights and enact national law that facilitates their activities.

Implementation of the "Declaration on Human Rights Defenders" 1/

12. The Declaration sets a common goal for the effective protection of human rights defenders at the national and international levels. The Declaration should be fully implemented and become a truly "living document" for the protection of human rights defenders at risk. To this end, the Lawyers Committee for Human Rights issues the following recommendations to the key actors in the implementation process:

(a) **States**. All States Members of the United Nations have committed themselves to uphold their obligations under the Declaration and effectively guarantee the rights of all human rights defenders on their territory. States should take all measures necessary to ensure the full protection of human rights defenders. In particular, national legislation incompatible with the Declaration should be reviewed and, where necessary, new laws protecting and enabling the work of human rights defenders should be adopted. States should make the Declaration widely available to everyone, particularly those involved in human rights activities, and undertake its translation into all national languages;

(b) **Human Rights Defenders.** Individuals, groups and organizations should use the Declaration as a protective tool and press their Governments to guarantee fully all rights and freedoms of human rights defenders in law and in practice. Violations of the rights of the Declaration should be reported immediately to national and international human rights monitoring bodies;

(c) **Commission on Human Rights.** The Commission on Human Rights should establish a specific monitoring mechanism to review the implementation of the "Declaration on Human Rights Defenders". Such a mechanism should be able to receive and communicate to Governments allegations of attacks on the rights of human rights defenders, and be able to visit countries. To this end, the Commission should create a special item on its agenda on the effective implementation of the "Declaration on Human Rights Defenders". All special rapporteurs and working groups should continue to report separately on abuses of human rights defenders falling within their mandates;

(d) **High Commissioner for Human Rights.** The High Commissioner for Human Rights should ensure a wide dissemination of the "Declaration on Human Rights Defenders" within the United Nations system, as well as among experts of the human rights field offices, treaty bodies, special rapporteurs and working

groups. Given the urgency of better protection for human rights defenders, the High Commissioner is encouraged to establish a focal point within her Office for the protection of human rights defenders;

(e) **Treaty Bodies**. Treaty bodies should give more prominent attention to the valuable role of human rights defenders in the domestic implementation of treaty standards, and their need for better protection. Experts should more systematically inquire about the ability of human rights defenders to conduct their work in the States parties under review, preferably at the beginning of their dialogue with each State. Treaty bodies should inquire about the action of States parties to bring national legislation that is relevant to the implementation of the Declaration into accord with their international treaty obligations.

Notes

1/ For more information on the Declaration, see the Lawyers Committee's analytical report "Protecting Human Rights Defenders: Analysis of the newly adopted Declaration on Human Rights Defenders", January 1999.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/70
5 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 13 of the provisional agenda

RIGHTS OF THE CHILD

Written statement submitted by the International Human Rights Law Group, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 February 1999]

GE.99-11195 (E)

1. The International Human Rights Law Group (the Law Group) welcomes the resolution of the Commission on Human Rights calling upon States that retain the death penalty A[t]o establish a moratorium on executions, with a view to completely abolishing the death penalty@.

2. The Law Group supports the findings on the mission to the United States of the former Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly N'Diaye. The Law Group also supports the conclusions reached in his report to the Commission, notably his conclusion that the current practice of imposing death sentences and executions of juveniles in the United States violates international law.

3. The United States has been executing persons for juvenile offences since 1642. The youngest child executed in the United States was James Arcene, a Cherokee Indian boy hanged in Arkansas in 1885 for his participation in a robbery and murder at age 10. This century, Fortune Ferguson, an African American youth, was only 13 when he was executed in Florida for rape in 1927.

4. Thirteen persons have been executed for childhood offences in the Amodern era@ of the death penalty, following the United States Supreme Court's reinstatement of the death penalty in 1976. Of the 38 states that authorize the death penalty, 20 states set the minimum age at 16, while four states set the age at 17. The remainder, along with the United States military and the federal Government, establish 18 as the minimum age.

5. This decade, only six countries are known to have executed child offenders: the United States, Iran, Nigeria, Pakistan, Saudi Arabia and Yemen.

6. International human rights instruments unequivocally prohibit use of the death penalty against persons for childhood crimes. The International Covenant on Civil and Political Rights states in article 6.5 that Athe sentence of death shall not be imposed for crimes committed by persons below eighteen years of age@. Article 4 (5) of the American Convention on Human Rights similarly proscribes the juvenile death penalty, as does article 36 (a) of the Convention on the Rights of the Child. The United States is one of only two countries yet to ratify the Convention on the Rights of the Child, partly out of its insistence on imposing the death penalty against children.

7. In March 1987, the Inter-American Commission on Human Rights declared that the United States had violated article 4 of the American Convention by permitting the execution of two juvenile offenders. The Commission held that while the United States had only signed the Convention, it was still bound by the terms of article 4 because the prohibition on imposing the death penalty on children had reached jus cogens status in the Americas.

8. The United States is the only country to have made a formal reservation to article 6.5 of the International Covenant on Civil and Political Rights, specifically reserving the right to impose the death sentence and execute

persons below the age of 18. In reviewing the initial report of the United States, the Human Rights Committee expressed its view that this reservation is incompatible with the object and purpose of the Covenant. Eleven States parties objected to the reservation of the United States to article 6, which is considered to be "non-derogable" under article 4 of the Covenant.

9. In Thompson v. Oklahoma (1988), the United States Supreme Court first addressed whether application of the death penalty on children was "cruel and unusual punishment" under the United States Constitution. The Court reasoned that because "of considerable risk" that the state legislature had not specifically considered whether 15-year-olds should be eligible for the death penalty, it would be unconstitutional to allow a death sentence to stand under the circumstances.

10. In Stanford v. Kentucky (1989), the United States Supreme Court ruled that it was constitutional to impose the death penalty on persons who commit crimes at 16 and 17 years of age. The Court ruled that since a majority of death-sentencing states (25 of 37 at the time) permitted imposition of the death penalty on persons who commit crimes at these ages, there was no constitutional violation.

11. In August 1993, the Criminal Justice Section of the American Bar Association passed a resolution opposing use of the death penalty against persons for crimes they committed under the age of 18. The accompanying report stated that "the notion of a governmental agency imposing the death penalty upon a child through its judicial proceedings raises the deepest questions about the demands of justice versus the special nature of childhood".

12. The Law Group calls attention to three grave trends in the current practice of imposing the death penalty against juvenile offenders in the United States.

13. First, the United States leads the world in executing persons for childhood offences. Of the known executions of persons for juvenile crimes in the 1990s, the United States carried out more such executions than Iran, Pakistan, Yemen, Saudi Arabia and Nigeria combined. The United States was the only country in 1998 to execute people for childhood offences, carrying out three such executions. Since reinstatement of the death penalty in the United States in 1976, no person sentenced to death for a juvenile offence has had his or her sentence commuted.

14. Second, administration of the death penalty against juvenile offenders is racially biased. Of those persons under sentence of death in the United States for offences committed under the age of 18, nearly two thirds (64 per cent) are members of racial minorities (African Americans and Latinos). By contrast, of those persons sentenced to death for adult crimes in the United States, 53 per cent are members of racial minorities (African Americans, Latinos, Asian Americans and American Indians).

15. Third, there is a high prevalence of childhood abuse among persons who are sentenced to death as children. An examination of 14 such individuals revealed long histories of physical and sexual abuse. Most of them also suffered from mental impairment.

16. The Law Group concludes that use of the death penalty against persons for juvenile offences in the United States violates established human rights norms. We ask the United States Government to pass legislation establishing a minimum age for death penalty eligibility, in the same way that the Government has established federal "standards" for age eligibility for alcohol and tobacco consumption. We ask the United Nations Commission on Human Rights to call upon States retaining the death penalty to cease its administration against children.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/71
5 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 12 (a) of the provisional agenda

INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE:

VIOLENCE AGAINST WOMEN

Written statement submitted by the International Human Rights Law Group, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 February 1999]

GE.99-11200 (E)

1. The International Human Rights Law Group welcomes the June 1998 mission of the Special Rapporteur on violence against women, its causes and consequences, to the United States of America. As a human rights organization based in the United States, the Law Group considers this mission of the Special Rapporteur to be critically important in reaffirming the basic principle that human rights are universal in their applicability, that impartiality must guide all United Nations human rights activities, and that no country is exempt from international scrutiny under internationally accepted human rights standards.

2. The International Human Rights Law Group was pleased to support the visit of the Special Rapporteur on violence against women and was especially pleased that the Special Rapporteur chose to examine the conditions of women in custody. In particular, it was important to disseminate information concerning the mandate and the work of the Special Rapporteur to the many representatives of non-governmental organizations (NGOs) who are working for women's human rights in the United States, many of whom have never had an opportunity to raise their concerns about the treatment of women in custody to United Nations human rights experts. A major concern of the Law Group and other NGOs is that the United States, by failing to ratify the Convention on the Elimination of All Forms of Discrimination against Women, and by taking reservations to key international human rights treaties, such as the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, has in effect shielded its human rights violations from international scrutiny as well as from direct legal action by aggrieved parties in the United States.

3. The Law Group welcomes the attention of the Special Rapporteur on violence against women to the issue of women in custodial confinement in the United States. In the United States, there are federal prisons which are administered by the federal Government, and State prisons which while administered by individual States remain under the authority of superseding federal law, including constitutional law and human rights law. There are also local facilities (or jails) primarily for certain inmates serving relatively short sentences. A collective term for federal and State prisons and local jails is "correccional facilities".

4. The United States is second only to Russia, among developed nations, in the incarceration of its citizens. It is also a well-established fact that in the United States, incarceration disproportionately affects racial and ethnic minorities. While African-Americans make up only 12 per cent of the overall population, they comprise over 50 per cent of those who are incarcerated. Increasingly, the burden of incarcerution is falling heavily on women - primarily African-American and Hispanic women. Numerous studies, including those conducted by the United States Government, have shown that African-American women are eight times more likely than white women to be incarcerated, while Hispanic women are twice as likely as white women to be incarcerated. In 1996, the female prison population growth in the United States was double that of males. Most women who are incarcerated in the United States have been convicted of non-violent economic offences such as fraud, embezzlement and, increasingly, drug offences. Between 1990 and 1996, drug offenders accounted for 45 per cent of the growth in the female prison population. One third of female inmates in State prisons are incarcerated for drug offences, and in federal prisons, a staggering three fourths of female inmates are incarcerated for drug offences.

5. This increase in the incarceration of women in the United States has had devastating impacts, particularly in the African-American and Hispanic communities. First, the disproportionately high rates of incarceration have fragmented already fragile families. Eighty per cent of women in prison are mothers and almost 70 per cent had custody of minor children prior to their incarceration. Approximately 10 per cent of women who give birth while in custody are separated from their newborns at birth in all but a few States. Visitation with children is also impeded by the great distance families must travel to visit women inmates. Many States have only one correctional facility for women; thus, women are often incarcerated far from their homes and families.

6. Second, women incarcerated in the United States are often denied access to adequate medical care, particularly obstetrical and gynaecological care. Litigation across the country in federal and State courts has proven allegations of women inmates receiving little or no prenatal care, women inmates having to give birth while in shackles, and women inmates being denied basic medical care that would have either prevented or relieved unnecessary pain or, in many cases, saved their lives.

7. Third, it has also been well documented in legal challenges, investigative reports, and by other sources of credible information that both federal and State prisons have failed to protect women in their custody from sexual violence and abuse. There are hundreds of reported incidents of sexual misconduct by correctional staff against women in their protection. These incidents have ranged from rape to coerced sex and sex in exchange for highly valued items in prison such as food, work opportunities, telephone privileges, or drugs. Sexual misconduct by correctional staff has devastating effects on women inmates, particularly those who already have histories of serious trauma and abuse. As a result of a widespread and institutional failure to provide adequate security and safety, many women have become impregnated while in custody both by correctional staff and by inmates. While most States and the federal government now have laws making such conduct illegal, these laws are rarely enforced. Fifteen States (Alabama, Kentucky, Virginia, Massachusetts, Washington, Minnesota, Missouri, Montana, Nebraska, Oregon, Pennsylvania, Utah, Vermont, West Virginia and Wisconsin) still have no laws prohibiting sexual contact between staff and inmates, while other States provide for only misdemeanour sanctions for the conduct. Most troubling, many States recognize "consensual" sex among staff and inmates by providing for either lesser penalties or no penalties for such conduct.

8. The mission of the Special Rapporteur on violence against women to the United States has already brought needed attention to this matter, but fundamental changes must occur to remedy the problems and human rights violations identified above. The United States has an affirmative obligation to respect, protect and fulfil the human rights of all persons, including those in custody, and this obligation flows to each State and to all agents of the United States Government, including authorities and staff of federal and State correctional facilities.

9. The United States should adopt policies that recognize and support the integrity of the families of women who are incarcerated in both federal and State prisons. For example, in 1994, the Family Unity Demonstration Project was passed by Congress as part of the Violence against Women Act. Funds have

never been appropriated to establish this project which would provide community-based correctional facilities for non-violent offenders who are primary caretaker parents of children under six years of age. Programmes such as the Family Unity Demonstration Project are not only cost effective but they prevent the further fracturing of the family caused by incarceration.

10. The United States must affirm that as a matter of both domestic and international law, incarcerated women have the right to appropriate and adequate medical care. Such women also have the right to their bodily integrity and their dignity as human beings, and should not be shackled or restrained during childbirth. Moreover, correctional staff should not use physical restraints against women during their third trimester of pregnancy and should develop model standards and protocols for both medical and security issues related to women in general, and pregnant women in particular.

11. The United States must prevent and redress sexual violence and abuse in prison. Sexual misconduct by correctional staff in State and federal prisons constitutes a human rights violation and failure of the United States to investigate, prosecute and remedy such misconduct is a continuation of the violation. The United States should require as a condition of receipt of federal prison construction funds that States enact laws prohibiting sexual abuse of prisoners. These laws should recognize the inapplicability of consent in a penal setting. Such laws should also provide funds for investigation and prosecution of alleged incidents of abuse. The United States should also appropriate funds for the development, testing and evaluation of training programmes for both correctional staff and prison inmates on the issue of sexual misconduct, including prevalence, consequences, prevention, penalties and remedies for such conduct.

12. The United States should develop recommendations regarding cross-gender supervision of women in custody. The United States, unlike most other countries, allows cross-gender supervision in correctional settings. There may be instances, however, where such supervision endangers the mental and physical health of women in custody, particularly those with histories of serious trauma and abuse. The United States should reconcile its interests in equal employment opportunities with its obligations to uphold the human rights of those in custody.

13. The United States should take steps to ensure that women in custody receive a range of rehabilitation opportunities during their incarceration, including educational and vocational programmes, counselling and support services, and treatment for substance abuse. Such programmes and services will help women reintegrate into society upon completing their sentences and will make their confinement more productive and humane. The United States should also consider alternatives to incarceration for non-violent offenders, especially those who are primary caretakers of children. In particular, the United States must re-evaluate federal and State legislative provisions for mandatory minimum sentencing of non-violent drug offenders. These provisions often result in excessive, unjust penalties and disproportionately affect women and members of racial and ethnic minority groups.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/72
5 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 18 of the provisional agenda

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

Written statement submitted by the American Bar Association, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 February 1999]

GE.99-11204 (E)

AMERICAN BAR ASSOCIATION

Recommendation adopted by the house of delegates 1/
3-4 August 1998

RESOLVED, that the American Bar Association recommends that the United States Government and the United Nations work towards consolidating into two committees the six United Nations standing committees currently monitoring compliance with the United Nations human rights treaties: one committee to review all State reports, and the other to examine inter-State and individual communications.

1/ The accompanying report is available for consultation in the secretariat.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/73
4 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Items 5 and 15 of the provisional agenda

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

INDIGENOUS ISSUES

Written statement submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 1999]

GE.99-11208 (E)

1. Violations of the human rights of indigenous peoples around the world continue to be rampant, brutal and pervasive. In most cases, these violations are ignored and, in many cases, are directly perpetrated by the States which were founded upon our traditional lands, the Members of the United Nations themselves. In the current era of globalization, multinational corporations are imposing massive-scale extraction and commercialization of the natural resources from indigenous peoples' lands and ecosystems. Once again, there exists little or no redress for indigenous peoples within State systems for the resulting violations of human rights, including forced removals and the contamination of homelands and communities.

2. A basic principle of international law is that human rights must be uniformly and universally applied. Without the equal application of international laws and standards, the fundamental integrity of international standard-setting itself is called into question.

3. Héctor Gros Espiell, the Special Rapporteur on the right to self-determination, stated in the conclusions to his 1979 report (United Nations publication, Sales No. E.79.XIV.5), that the right to self-determination is a fundamental human right, the enjoyment of which is an essential precondition for the enjoyment of any other human rights or fundamental freedoms.

4. But indigenous peoples are forced to continue to struggle to achieve the recognition of the basic and fundamental right to self-determination, both in day-to-day struggles for survival within the existing States, and at the United Nations itself. We are faced with defending this most fundamental and basic right contained in the current text of the draft United Nations declaration on the rights of indigenous peoples even as we meet with States to discuss this declaration at the sessions of the open-ended inter-sessional working group established for this purpose by the Commission.

5. During these sessions, including the most recent one which concluded on 11 December 1998, we have been struck by the intractable position of some States, notably the United States of America, as they attempt at every opportunity to justify excluding indigenous peoples from the enjoyment of this basic and inalienable right which has nonetheless been enshrined in international law as the right of all peoples.

6. The United States, in particular, during the last inter-sessional working group session made continual attempts to challenge the applicability to indigenous peoples of the right of self-determination by attempting to redefine us as something other than "peoples" in the text. Options which the United States delegation put forth included a proposal, echoed by the Japanese delegation, that the term "indigenous peoples" in the text should be changed to "persons belonging to indigenous groups". This language may be acceptable terminology in addressing the rights of minorities, but has no legal basis, and no precedent in international law referring to the rights of peoples.

7. Another wholly objectionable option which the United States presented during the session was to place an asterisk next to the word "peoples" throughout the text, with a qualifying statement attached stating that "the use of the term peoples in the declaration has no implication regarding the

right of self-determination or any other rights which may attach to the term under international law". The United States delegation noted that a similar statement is already contained in ILO Convention No. 169, as well as in the current draft of the Organization of American States proposed Declaration on the Rights of Indigenous Peoples.

8. In fact, the proposed American Declaration seeks to qualify the word "peoples" to the extent that it would have no legal significance internationally. Article 1.3 states that "the use of the term 'peoples' in this instrument shall not be construed as having any implication with respect to any other rights that might be attached to that term under international law".

9. However, the internationally recognized right of self-determination of all peoples is defined and described in several instruments of the United Nations, including common article 1 of the two International Covenants on Human Rights. The great majority of member States of the OAS are already bound to observe and respect this most fundamental freedom by virtue of their ratification of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Even the United States is bound, even though it has signed and ratified only the former and signed but not ratified the latter.

10. The proposed OAS Declaration cites Convention No. 169 in its perambular language as "progress", but fails to mention the draft United Nations declaration as progress in this regard. It should be noted that indigenous peoples have serious questions regarding the legitimacy and purpose of the OAS Declaration now being considered by the OAS General Assembly. It was developed without the input or even the knowledge of most indigenous peoples' organizations in the region, who were only later, and sporadically at best, asked for their response. The United States-endorsed type of wording contained in the proposed OAS text qualifying and limiting rights, specifically the right to self-determination, for indigenous peoples under international law has persisted despite the clear and consistent objections of the indigenous peoples' organizations who have commented on the OAS text to date.

11. This raises serious questions about whether the actual intent of this effort was, from its inception, to undermine the recognition of the right of self-determination for indigenous peoples contained in article 3 of the draft United Nations declaration. Since the OAS members are also members of the United Nations, questions remain as to why there was a need to develop, behind closed doors, an alternative text which undermines, qualifies, limits, and in fact directly contradicts the recognition of the most basic of rights contained in the draft United Nations declaration, specifically the right to self-determination. It is important to note in this regard that the United Nations process, unlike the OAS process, continues to include indigenous peoples.

12. Despite the stubbornly discriminatory position of some States regarding the universal application of this most basic right, the open discussions on the right of self-determination in the inter-sessional working group as well

as in international forums such as the recent UNESCO international expert meeting on the implementation of the right to self-determination held in Barcelona, Spain, from 21 to 27 November 1998 are indications of progress.

13. Such discussions, which include the effective participation of indigenous peoples, indicate a growing recognition within the international community that the concept of self-determination is capable of broadening and evolving in its application. The position of many of the States can be seen to be evolving as well in this regard. For this reason we continue to be encouraged.

14. We continue to observe that the universal application of self-determination as the recognized right of all peoples under international law is an essential underpinning for the peaceful coexistence of peoples based on mutual respect, rather than the brutality of colonial domination and disenfranchisement that has characterized the past 500 years of indigenous peoples' existence.

15. Along these lines, the conclusions of the UNESCO expert meeting stated that "The peaceful implementation of the right to self-determination in its broad sense is a key contribution to the prevention and resolution of conflicts, especially those which involve contending interests of existing states and peoples, including indigenous peoples ...".

16. In the name of justice, human rights, peaceful coexistence and the fundamental principle of non-discrimination, the International Indian Treaty Council once again urges the members of the Commission on Human Rights to insure that the human rights of and equality for indigenous peoples are fully recognized and protected at long last by adopting without delay the current text of article 3 of the draft declaration, affirming that "Indigenous Peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". We ask this for our children, and for yours.

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UNITED
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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/74
4 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Items 6 and 15 of the provisional agenda

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

INDIGENOUS ISSUES

Written statement submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 1999]

GE.99-11212 (E)

1. A fundamental purpose of the United Nations, stated in Article 1 (3) of the Charter, is to promote and encourage respect for human rights and fundamental freedoms for all without regard to race. From that inception, numerous United Nations studies, including studies on slavery and workers' rights, referred to the practice of racial discrimination as the basis for these and other violations of human rights. As a result the United Nations Declaration on the Elimination of All Forms of Racial Discrimination was proclaimed in 1963, and the International Convention on the Elimination of All Forms of Racial Discrimination was adopted in 1965.

2. Although the Declaration and Convention do not specifically refer to indigenous peoples, the same studies that gave rise to both the Declaration and the Convention itself did refer to blatant and prevalent discrimination against indigenous peoples. 1/ In 1971, a study to examine the problem of racial discrimination (E/CN.4/Sub.2/1982/2, para. 8) found that discrimination against indigenous peoples was so pervasive and so deep that a special study was required to examine the problem of racial discrimination against indigenous peoples. This led to the monumental Study on the Problem of Discrimination against Indigenous Populations by Special Rapporteur José R. Martínez Cobo. 2/

3. In response to the problem of discrimination against indigenous peoples, the Economic and Social Council established the Working Group on Indigenous Populations (WGIP) in 1982 (resolution 1982/34) to examine specifically the state of the human rights and fundamental freedoms of indigenous peoples and to give special attention to the evolution of standards concerning their rights.

4. In spite of this history of work on behalf of indigenous peoples by the United Nations and some of its specialized agencies, notably the International Labour Organization, the long and persistent history of discrimination against indigenous peoples, described by Mr. Martínez Cobo in the introduction to his final report as "discrimination, oppression and exploitation", continues to this day; it is not merely "historical".

5. Discrimination against indigenous peoples, as pointed out by numerous studies, including that of Mr. Martínez Cobo, grinds with the gears of exploitation and economic domination. Not only slavery and forced labour continue to plague indigenous peoples; so do massive theft of lands, forced and often violent removal from their lands and territories, exploitation of their resources and ruination of their environment. Indigenous peoples continue to suffer economically and militarily enforced assimilation and the resultant loss of culture and language.

6. Discrimination against indigenous peoples, once justified by early colonists as a religious necessity, is now justified as a necessity for development and progress. The means of discrimination - genocide, forced removal, starvation and economic slavery and exploitation - remain the same. Forced removal itself, defined as a crime in Additional Protocol II to the Geneva Conventions, prohibited by that same universal standard in time of war and civil conflict (as is the destruction of sites of religious significance), is today justified in the name of development.

7. It is no coincidence that development is often justified using racist rationales against those who continue their traditional lives on their traditional lands and territories. "If indigenous populations are incapable of development then it is the duty of someone else, normally the State, to do it for them." "If indigenous populations do not possess or are incapable of the necessary skills for the proper exploitation of their own resources, then others shall have to do it without them."

8. Yet, as pointed out in numerous publications and studies, 80 per cent of the world's biodiversity is found on indigenous lands. And the developed world has little if any remaining resources left. This is the basis of discrimination against indigenous peoples. Just as the beginning of the colonial period justified its excesses as divinely inspired, the destruction of indigenous peoples and the destruction of Sacred Mother Earth's remaining resources are today justified in the name of the national development and so-called free trade.

9. It can be said that the grossest and most massive violations of the human rights and fundamental freedoms of indigenous peoples are based on the continuing practice of a profound and persistent racial discrimination. It has been said that human rights violations, particularly against indigenous peoples, precede development.

10. The mandate of the WGIP includes the charge that the WGIP particularly bear in mind the conclusions and recommendations of the Martínez Cobo study. In his final conclusions and recommendations, Mr. Martínez Cobo found that the right of self-determination is the fundamental condition for indigenous peoples to enjoy their fundamental rights and determine their futures, and at the same time develop and transmit their cultures to future generations (and he used the word "peoples" without qualification). 3/ It must be noted that numerous studies published by the WGIP since its formation in 1982 - too many to cite herein - many written by the excellent Chairwoman and expert Mrs. Daes and, most recently, by Mr. Miguel Alfonso Martínez, have come to the same conclusion, directly or indirectly.

11. In 1995, the WGIP, pursuant to its mandate, forwarded to the Sub-Commission, and to the Commission, the long-awaited, long-discussed Draft declaration on the rights of indigenous peoples. And as also required by its mandate, the WGIP took into account, over a 12-year period, the aspirations of indigenous peoples reflected by thousands of their representatives from around the world.

12. Yet the open-ended working group established by the Commission to study the draft persistently refuses to recognize that indigenous peoples are indeed "peoples", with all that the word implies in well-established international law. Some continue to insist, in the face of numerous United Nations documents that inherently differentiate between the rights of peoples and the rights of States (including the Declaration on the Right of Peoples to Peace and the Charter itself), that the right of self-determination is reserved only for States.

13. This persistent refusal to recognize indigenous peoples as "peoples" is being perceived by many as based upon the deeply engrained racial

discrimination against indigenous peoples so well studied by the United Nations. To many indigenous participants at the inter-sessional working group this denial of the rights of "peoples" to indigenous peoples sounds too much like the early colonists' religious and racial rationales. For to tell an individual that a particular human right does not apply to him or her is to say that he or she is somehow lacking in the requisite humanity. To tell a people that they do not qualify for the human rights of "peoples" produces the same result. It is an equal affront to their human dignity.

14. Lamentably, as documented by the United Nations itself, racist rationales for exploitation persist to this day, in every society of every State with indigenous populations. And there can be no doubt that racial discrimination continues to be a persistent condition in the daily existence of indigenous peoples throughout the world. One brief example: the IITC has received documentation from the local indigenous community stating that in the municipality of Pahuatian del Valle, Puebla, Mexico, the Nañhu indigenous community presented a candidate for the alcaldía (mayoralty) election held on 8 November 1998. During the course of the election, the candidate, Mr. Martiniano Santos Trinidad, was grossly discriminated against and the community defamed by the local agents and candidates of the ruling party of Mexico, the PRI.

15. Throughout the campaign period, statements were made and published that indigenous persons are not capable of governance and are incapable of meeting the demands of electoral office. The local Catholic priest is alleged to have told his parishioners that if the indigenous candidate won, people would lose their lands, that all of the elderly would be killed and that the Bible would be burned.

16. What is most disturbing is not that such things should be said, but that they be said with the expectation that they would be believed. Such is the depth of discrimination against indigenous peoples. Can it be said that those who govern are immune from such attitudes, as prevalent and as persistent as these attitudes are within their own societies?

17. The IITC would respectfully urge the members of the Commission to closely and in good faith examine the basis of their opposition to the recognition of indigenous peoples as "peoples", with all that the term implies in international law, since this same human right and fundamental freedom is apparently applicable to non-indigenous "peoples". We urge this examination lest the United Nations be perceived as itself fallen victim to the evil that it has been so profoundly studied and so long condemned.

Notes

1/ See e.g.: two reports of the ad hoc committee appointed by the ecretary-General pursuant to Economic and Social Council resolution 238 (IX) f 20 July 1949, final report of the ad hoc committee on forced labour stablished by ECOSOC resolution 350 (XII) 19 March 1951, leading to LO Convention No. 29 on Forced Labour.

2/ The first report was submitted in 1981 (EC/CN.4/Sub.2/476); the tudy in five volumes was completed in 1986 (E/CN.4/Sub.2/1986/7 and Add.1-4). ddendum 4 containing the conclusions and recommendations was published as a nited Nations publication (Sales No. E.86.XIV.3).

3/ Ibid., addendum 4, paragraph 269.

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UNITED
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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/75
5 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Items 10 and 15 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

INDIGENOUS ISSUES

Written statement submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 1999]

GE.99-11216 (E)

1. The International Indian Treaty Council (IITC) hereby submits this written statement on behalf of the Gwich'in Steering Committee, a representative body of the Gwich'in Nation.

2. The United States Congress is responsible for decisions regarding proposed oil development in the birthplace of the Porcupine Caribou Herd located on the coastal plain of the Arctic National Wildlife Refuge in north-east Alaska. At this time there is pending legislation (S2589) to conduct 3-D seismic testing for oil on the Refuge, which was introduced to the United States Senate on 8 October 1998. A duplicate bill (HR4755) was introduced to the United States House of Representatives at the same time. Each year, legislation is introduced to open the 1.5 million-acre coastal plain of the 19 million-acre Arctic National Wildlife Refuge to oil development. This area was set aside in 1980 as a "study area"; it would take an Act of Congress to open it to oil development or protect it as wilderness.

3. Congress considers oil development of this sacred area based on economic and environmental impacts. The cultural and human rights impacts on the Gwich'in are not seriously addressed. It is our firm belief that development would have devastating lasting effects on the Gwich'in socially, culturally and spiritually. The basic cultural and human rights of the Gwich'in should be addressed and safeguarded. In this document the spiritual, cultural and social relationship of the Gwich'in to the Porcupine Caribou Herd is described.

4. The Gwich'in people are located in 15 villages within their traditional territories in north-eastern Alaska and north-western Canada. The Gwich'in once numbered 100,000, but since contact was brought upon them there are now only 7,000 survivors. The great decline of the people is due to the onslaught of many diseases, which were brought by newcomers, as well as famine and war. There are 10 bands composing the Gwich'in Nation. The bands all derived from the ancient Di'haii Gwich'in.

5. The Gwich'in people have always been a land-based culture and were once nomadic, following seasonal cycles of game. The way of the Gwich'in is one of respect for the entire and total environment on which their livelihood is reliant. From the time it comes into this world, a child is taught the important value of respect for all life and to believe in the connection between everything in the natural environment. There has always been a very direct relationship between the Gwich'in people and the Porcupine River Caribou Herd; the caribou has ensured the survival of the Gwich'in.

6. The Gwich'in have a story of the creation time when the animals and people were one, before animals and human beings were separated. When this change occurred, the Gwich'in came from the caribou. An agreement between the two was made. From that time forward, the caribou would retain a piece of the Gwich'in heart and the Gwich'in would retain a piece of the caribou heart. In this way the caribou and the Gwich'in are interrelated and part of each other. What befalls the caribou befalls the Gwich'in and vice versa.

7. All the ancient traditional songs and dances of the Gwich'in tell the story of this ancient relationship between the two. The people dance the movements in the exact way that the caribou moves. When the dance is

fulfilled, it is in essence a spiritual walk between the two and the Gwich'in and caribou are one again. That is their venue of spiritual communication.

8. The caribou migrates through Gwich'in homelands to and from the birthplace. When the caribou is within Gwich'in traditional territories or passing through, the Gwich'in work together; in one direction they prepare. The people move to the land where a temporary hunting community is built. This is the time when the life lessons are taught to the younger generation of the Gwich'in people.

9. The women and grandmothers teach the younger women and girls very important traditional skills. The girls are taught the proper names of the animal parts and proper methods of taking care of the meat. They also learn the techniques of tanning the hides for clothing, what part of the animal is used for certain tools, such as needles, hooks, tanning tools and sinew. The elder women tell the younger ones of the family lineage and ties. The young also learn the traditional mother/wife skills and life skills of the women. It is an important time of learning the functions of the tribe.

10. The men and grandfathers teach the skills of manhood to the young men and boys. They learn the hunting skills needed: the methods of stalking and taking the animal, the value of sharing what is taken, the names and memory of the hunting lands and lessons of timing. The young are taught to handle the kill with great care and respect, and to give proper thanks to the Creator for the gift. This teaches the young men of their responsibility to the tribe as a provider. This knowledge is important to the men, because they are the lifeblood of the tribe.

11. The caribou provides the Gwich'in with survival tools such as: needles, awls, hooks, shelter (caribou skin hut), snowshoes, sleds, blankets, clothing for winter and summer, and tanning supplies. The cultural values that are taught consist of the respect for the basic teaching of give and take. Life is sacred.

12. Gwich'in villages are isolated and people rely mostly on wild game to provide all the nutritional needs of the people, requiring a traditional diet to maintain the health of the people. There are grocery stores in the villages, though the cost of freight is so high that the prices are too costly. The people subsist.

13. Vadzaih digii yi dehk'it gwanlii (The Sacred Place Where Life Begins). The coastal plain of the Arctic National Wildlife Refuge has been the birthplace of the caribou since time immemorial. The Gwich'in have always considered this area as a sacred area. In the traditional way of thinking and view of life, they believe that a birthplace of any animal is sacred and should not be disturbed. This ensures the survival of the animal and, in this way, ensures Gwich'in survival.

14. The reasons the Porcupine Caribou Herd uses the coastal plain of the Arctic National Wildlife Refuge for birthing and nursing their young during the early spring and mid-summer months of April, May, June and July are due to these circumstances: the winds from the coast provide relief from the mass of mosquitoes, which harass the young; the coastal plain is a safe haven from

predators. Lastly, the plant life that the coastal plain supports is high in nutritional value for the young, providing them with high energy for the long trek south to their wintering grounds in the traditional territories of the Gwich'in people.

15. The coastal plain is the birthplace of other species. There are 135 species of migratory bird nesting their young during the spring, denning polar bears use the coastal plain during the winter, and the near-extinct musk oxen live on the coastal plain year round.

16. The Gwich'in resisted efforts by multinational oil companies, corporations and the State of Alaska to promote oil development and production on the coastal plain of the Arctic National Wildlife Refuge in 1988. The first Gathering of the Gwich'in Nation in over 100 years was held 5-10 June 1988 in Arctic Village, Alaska. The Gathering was attended by the Gwich'in leadership and elders from each of the Gwich'in villages in Canada and Alaska. The people addressed the issue of the caribou and their culture's intrinsic link to the caribou. A standing resolution was passed and the political arm of the Gwich'in Nation was created to specifically address the continuing threat to cultural existence. The cultural genocide of an existing thriving culture is in question.

17. We call upon the United Nations to formally recognize the potentially devastating impacts of the proposal by the United States Congress to drill for oil on the coastal plain of the Arctic National Wildlife Refuge and to implement effective mechanisms for international oversight and redress in situations where indigenous peoples' cultures are threatened or impacted by the actions of multinational corporations and non-sustainable development.

18. Furthermore, we call upon the United States Congress and the President to reverse this threat of cultural genocide by recognizing the rights of the Gwich'in people to continue to live their way of life by prohibiting development in the calving and post-calving grounds of the Porcupine Caribou Herd and to recognize the 1002 area of the Arctic National Wildlife Refuge as wilderness area to achieve this end.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/76
5 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Items 11 (a) and 15 of
the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF:

TORTURE AND DETENTION

INDIGENOUS ISSUES

Written statement submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 1999]

GE.99-11220 (E)

1. The massive violation of the human rights and fundamental freedoms of indigenous peoples as peoples are grievously reflected in the impunity with which Governments violate indigenous persons' individual human rights. This truth is well reflected in the agenda sub-item entitled "Torture and detention".

2. Too many times is the arbitrary detention of indigenous defenders of indigenous human rights treated as a common crime, as though divorced from the actions of the State. For example, in September 1998, Chief Adrian Esquino Lisco, the spiritual leader of ANIS, the National Indigenous Association of El Salvador, was arrested by men in plain clothes, taken out of the jurisdiction and held and charged in another Department with the misuse of ANIS funds and resources. The local police and local courts, under whose jurisdiction these charges fell, were not consulted.

3. The charges were based upon the State's decision to award the juridical recognition of ANIS to others more in sympathy with the Government. But because of urgent appeals from all corners of the globe Chief Lisco was released, and later the charges against him were completely dismissed. But the juridical recognition of Chief Lisco as the legitimate leader of ANIS remains in the courts of El Salvador. Thus, the State's dispute with ANIS was and continues to be over the right of indigenous peoples to their traditional lands.

4. On 3 January 1999, Victor Manuel Díaz, a 19-year-old Salvadoran Nahuat street merchant, was kidnapped. His captors repeatedly telephoned his family asking for ransom, threatening him with violent death. Mr. Díaz is an active supporter of Chief Lisco, and his family has long-standing ties and loyalties to ANIS.

5. It is doubtful that the humble family of a street merchant can raise any ransom. His kidnapping can only be attributed to his and his family's activism on behalf of ANIS and their large and vocal protest against Chief Lisco's arbitrary detention.

6. There is no doubt that the victims of arbitrary detentions are not only the unfortunate individuals that are taken, but include the families, who many times are forced into desperate poverty as a result of the loss of the earnings of the victim and who live in desperate fear for their loved one, as well as other members of the family. Chief Adrian Lisco has related to us the anguish of sleepless nights, the torture of concern not for himself but for the safety and well-being of his children and their families.

7. The International Indian Treaty Council (IITC) also brings to the attention of the Commission on Human Rights the situation of the Chinanteco peoples, now of Veracruz, Mexico, relocated from their traditional lands and territories in Oaxaca, Mexico, and the imprisonment of their leader, Juan Zamora González, and his brother Marcos Zamora González.

8. In 1972, the Mexican Federal Government, under the direction of President Luis Echeverria Alvarez, ordered the construction of the Cerro del Oro dam in San Lucas Ojitlan, Oaxaca. The proposed dam would control the

Papaloapan river, inundating the region of San Luis Ojitlan, forcing the relocation of 5,000 indigenous Chinanteco families.

9. The Mexican Government has failed for 27 years to comply with its promises, in spite of repeated requests to negotiate and finally resolve the Chinanteco forced relocation. In response, the indigenous Chinantecos and Zoques of Uxpanapa Valley founded the Uxpanapa Indigenous Council (CIUX) on 28 October 1994. As an autonomous grass-roots indigenous organization, CIUX's mission was to further Mexican federal and state government compliance with the presidential decrees concerning the Chinanteco relocation and compensation. At CIUX's first election, 1,572 delegates from 72 ejidos unanimously elected Juan Zamora González as CIUX's President.

10. Instead of addressing the long-standing unfulfilled promises, the Government has declared that the land on which the Benito Juárez Poblado No. 1 Chinantecos now reside as a result of the 1972 relocation, now belonged to the Carolina Anaya I ejido instead. The Government has ordered the removal of the Chinantecos from Poblado No. 1 despite the presidential decree granting that land to the Chinantecos as part of their 1972 relocation. To add insult to injury, Juan Zamora González and his brother were arrested on 3 May 1997. Marcos Zamora's only crime, apparently, is that he is related to Juan.

11. On 2 December 1997, the IITC submitted a communication to the Working Group on Arbitrary Detention concerning Juan and Marcos Zamora González. On 8 April 1998, the IITC again communicated with the Working Group, supplementing our initial communication with additional documentation. We also requested information on the status of our initial communication. We evidenced great concern for the failing health of Juan Zamora, as well as concern for both these prisoners of conscience due to the long period of their arbitrary detention.

12. These communications were presented on behalf of the Congreso Nacional Indígena (CNI), a congress of indigenous communities and organizations, including the indigenous community of Uxpanapa, Veracruz, Mexico; the Consejo Indígena de Uxpanapa, an indigenous organization of the same place, as well as the son of Juan Zamora González, who himself is being sought by the Mexican authorities.

13. Juan Zamora is still detained arbitrarily. He is being subjected to four different criminal processes in four different jurisdictions: two different federal and two state (Veracruz and Oaxaca). He is charged with false imprisonment and injury to three Veracruz state officials, as well as the federal crimes of sabotage, harm towards the nation, and attacks against communications lines.

14. In a recent letter to the IITC, also communicated to the Working Group, Mr. Zamora related the pain of his continued unjustified and arbitrary detention, and the monetary costs of defending the charges, including the presentation of evidence and witnesses and four different attorneys in four different jurisdictions. His defence has beer such an enormous expense that he can no longer feed himself in prison, nor provide for his family.

15. The Working Group has many times made the point that in arbitrary detentions, the families of victims are themselves victimized. Mr. Zamora and his brother have been held in prison, denied bail, and made to answer these charges since 3 May 1997. They have been detained, without any resolution of their imprisonment by local processes, for almost two years!

16. In his letter Mr. Zamora also describes the conditions of his imprisonment, and the food provided to prisoners, as unsanitary and vile.

17. The Working Group has pointed out on many occasions that local processes themselves, when they fail to resolve an imprisonment within a reasonable period of time, indicate an arbitrary detention. The very nature of the charges against Juan Zamora González themselves demonstrate the arbitrariness of the detention.

18. It has only been a few months since the fiftieth anniversary of the Universal Declaration of Human Rights. Throughout the world people gathered to celebrate the noble aspirations of the international community. No doubt the work of the United Nations has raised the consciousness of humanity in that violations of human rights are no longer considered legitimate exercises of a State's power. Lamentably, the task of ensuring that States curb impunity and their excesses remains as profoundly needed as it was in 1948.

19. With regard to the kidnapping of Victor Manuel Díaz, we call upon the Salvadoran authorities to fully investigate his case, to secure his speedy and safe release, and to punish the perpetrators to the full extent of the law.

20. In the case of Mexico, the IITC relates to the Commission its great concern not only for Juan and Marcos Zamora González, but for the state of human rights and fundamental freedoms in Mexico.

21. Although we understand that because of international pressures, including concerns raised by the Secretary-General and the High Commissioner for Human Rights, the International Committee of the Red Cross has been invited to attend to the needs of the thousands of internally displaced indigenous peoples of Chiapas, other international human rights defenders and non-governmental organizations are denied entry and are being deported. Human rights and fundamental freedoms are not merely an internal concern but an international concern, as evidenced by the International Bill of Human Rights and the work of the Commission.

22. We call upon the Working Group on Arbitrary Detention to fulfil its mandate with regard to the arbitrary detentions of Juan and Marcos Zamora González.

23. Because of our great concern for the indigenous peoples of Mexico, and Chiapas in particular, we also call upon the Commission to seriously consider the appointment of a special rapporteur for Mexico.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/77
5 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Items 13 and 15 of the provisional agenda

RIGHTS OF THE CHILD

INDIGENOUS ISSUES

Written statement submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 1999]

GE.99-11224 (E)

1. In 1789 the United States of America signed its first treaty under the Constitution with American Indian tribes. At that time the United States Government pledged that it would build its relationship with American Indians based on consistency, fairness and honour. Since that time indigenous peoples have survived, having gone through untold suffering, tragedy, and loss of family and relatives. Today there are over 557 federally recognized Indian tribes in the United States. Each tribe has a unique history and traditions that comprise its cultural identity.

2. The Indian children who have had to live through government policies which sought to separate them from their parents, many of them placed in boarding schools far from home, have shared our heartache and despair. That was an attempt by the United States Government to undermine the family and tribal structure of indigenous communities and begin a policy of ethnocide, more commonly referred to as assimilation - the destruction of a culture and way of life handed down from generation to generation. The abuse of the American Indian by the United States Congress has had a negative impact within the very institutions that were supposed to provide for their health, education and well-being.

3. The International Indian Treaty Council (IITC) will confine its statement to judicially created exceptions by the courts concerning the Indian child and of how they undermine current provisions in the Indian Child Welfare Act of 1978 (ICWA), as an example of continuing interference with parents, families and tribal members.

4. ICWA was the product of rising concern in the mid 1970s over the consequences to Indian children, Indian families and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes. United States Senate oversight hearings in 1974 yielded numerous examples, statistical data and expert testimony documenting what one witness called "the wholesale removal of Indian children from their homes ... the most tragic aspect of Indian life today". A number of witnesses also testified to the serious adjustment problems encountered by such children during adolescence, as well as the impact of the adoptions on Indian parents and the tribes themselves.

5. If the provisions of ICWA are not adhered to, state court orders regarding adoptions, termination of parental rights and other custody issues can be invalidated. In essence, it is in everyone's best interest to not ignore ICWA. As a result of resistance to ICWA, however, what has emerged are court-crafted exceptions that seek to prevent its application. It should be noted that these exceptions have to do with attempts by various courts to define who qualifies as an Indian for the purposes of the Act. A major problem, as a result is that these exceptions vary from state to state and are not uniformly recognized, even amongst the courts within a given state! The judicially created exceptions to ICWA circumvent the application and intention of the Act and effectively frustrate the purpose of allowing tribes to make decisions about its people.

6. An outright attack against ICWA is the "existing Indian family doctrine". Under this judicially carved exception to ICWA, courts look to the

biological parents of the children to decide whether they constitute an Indian family. In deciding if a child is part of an Indian family, courts will look at whether a child was taken from parents who appear to be "real" Indians and who maintain an Indian family unit. If the court finds that the parents do not constitute an "existing Indian family", then courts have found that the preservation of an Indian family is not at issue. In such cases, courts reason that the purpose behind ICWA - to preserve Indian culture and promote the stability and security of Indian tribes and families - is not frustrated. Thus, when the "existing Indian family doctrine" is applied, the removal of a child is not in violation of ICWA since the Act, the argument goes, does not apply to that child.

7. Currently at issue is the new Adoption and Safe Families Act of 1997 (P.L. 105-89). The United States Congress enacted changes that have impacted ICWA on 13 November 1997. The new Act has created a major shift in federal policy on foster care and permanency planning for children. The Adoption and Safe Families Act has monetary incentives for states and counties ($4,000 for each foster child adopted, plus an additional $2,000 for any foster child that is determined to have special needs). American Indian children are still being adopted at a very high rate, and many have special needs.

8. The new federal standards under P.L. 105-89 impact certain Indian children under state care and custody. P.L. 105-89 amends laws (Title IV-B and IV-E of the Social Security Act) that do not specifically address ICWA, and its legislative history does not specifically address ICWA. The law redefines when "reasonable efforts" to reunify need to be made. It exempts state agencies from this standard of effort for families under their care when circumstances include specific situations. A striking point of contention is that a state must initiate a petition to terminate parental rights when: (a) a child has been in foster care for 15 of the most recent 22 months; (b) a child has been determined to be abandoned; and (c) a parent has been involved in a variety of felony crimes related to the child or other parent of the child.

9. The exploitation and abuse of a child often can occur away from home, as well as in a family setting. However, when separated from home the child will often feel abandoned, unsure, timid and dependent on others for his care, and can fall into the hands of a perverted adult. It is gratifying to know that global attention is focusing on one of the most despicable forms of child abuse, sexual exploitation.

10. The Commission is reminded that the United States Senate established the Special Committee on Investigation of the Select Committee on Indian Affairs in 1987, which uncovered massive fraud, corruption and mismanagement in American Indian affairs. This investigation also found that in federally run schools for Indian children, Bureau of Indian Affairs (BIA) officials knew that school administrators had hired teachers with a history of prior offences of child molestation. Moreover, the BIA knew that its employees had failed to report or investigate repeated allegations of sexual abuse by teachers, in one case for 14 years. Yet, the BIA promoted negligent school administrators and, unlike all 50 states, never fully adopted a system that

required employees to report and investigate child abuse. It is significant to point this out because of the problems that result as a consequence of this repugnant behaviour, whose victims live in a nightmare.

11. Recently, the Pikanii Nation (Blackfoot Confederacy) announced a first-ever tribunal to hear about the incidence of abuse, crime and other genocidal acts in the aftermath of Indian children being forced to attend residential schools in Canada and boarding schools in the United States that were operated and sponsored by the two Governments. In both countries the Governments subcontracted the work of subjugation of the native peoples, especially their children, to Christian Churches. A spokesman, Long Standing Bear Chief of the Pikanii Nation in what is now called Montana, said, "The tribunal will be conducted according to aboriginal nation laws and customs and international law. We say these are international matters because they were done as part of treaties with the Indian Nations ...".

12. In closing, the IITC and its affiliate organizations encourage the Commission to look closely at how the Indian has survived in the United States and how the Indian Child Welfare Act would be strengthened if the United States of America would ratify the Convention on the Rights of the Child.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/78
5 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Items 15 and 17 (d) of
the provisional agenda

INDIGENOUS ISSUES

PROMOTION AND PROTECTION OF HUMAN RIGHTS: SCIENCE AND ENVIRONMENT

Written statement submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 1999]

GE.99-11228 (E)

1. Indigenous peoples from around the world are currently involved in critical international discussions with States and within international treaty-making processes regarding the causes, impacts and solutions of the growing crisis of global climate change as well as the dispersion of persistent organic pollutants (POPs).

2. Indigenous peoples' day-to-day survival is based upon their subsistence ways of life in close relationship to the ecosystems where they have traditionally hunted, fished, farmed and gathered for their survival. The cumulative effects of global climate change and the proliferation of POPs in the air, waters, food chains and human tissues have begun to have a devastating impact on indigenous communities. Indigenous peoples' traditional interdependence and spiritual relationship with their natural surroundings provide them with acute and immediate awareness of the growing impacts on plants, animals, water quality and human health.

3. The extent of the pending crisis has been clearly identified by Western scientists as well as by indigenous traditional teachings. Indigenous peoples are beginning to make their voices heard in response to these critical threats to their ways of life and the survival of all living things. For example, on 25 January 1999 at the second session of the Intergovernmental Negotiations Committee on POPs in Nairobi, the following statement was made by a representative of the Indigenous Environmental Network (IEN). IEN is based in aboriginal lands in what is now the United States, with over 200 affiliated indigenous organizations, traditional societies and tribal sovereign governments from the United States and Canada, as well as Mexico and Central and South America:

> "During the past two years, our organization has directly consulted with approximately 1,500 indigenous peoples on the serious issue of the impact of persistent organic pollutants (POPs) upon our communities, our villages, our environment.
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> "We are discovering that our indigenous peoples, from the farming villages of the south to the villages of the Arctic north, are being disproportionately impacted by POPs contamination. Our indigenous peoples are at higher risk of POPs exposure due to our land-based and subsistence cultures.
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> "Within the Great Lakes water basin that includes the political transboundaries of the United States and Canada, there have been marked increases in cancer, birth defects, diabetes and immunological-based disorders (e.g. allergies and asthma). Indigenous peoples within the Great Lakes have reported residues of certain chemical contaminants in their tissue. Residues of these chemicals, such as PCBs, DDT, and dioxin, are stockpiled in the blood, fat, and mothers' breast milk of our indigenous women - who are the first environment of our peoples. POPs remain stockpiled in the sedimentation of riverbeds, on the land and bodies of our habitat, often without adequate remediation.
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> "In Sonora, Mexico, high levels of multiple pesticides were found in the cord blood of newborns and in breast milk of the indigenous Yaqui farmers.

"Persistent organic pollutants affect the traditional cultural and religious practices of indigenous peoples throughout the world. The continued production, release and use of POPs affect our right to maintain a sustainable and subsistence way of life. POPs chemicals affects our right to fish, to hunt, and to gather within environments that are clean. In many areas of North America we do not have access to chemical-free plants that we use for healing our families. We have women basketweavers who are contaminated from persistent toxic substances. This situation reflects indigenous peoples issues throughout the world.

"National and international policies that prevent indigenous peoples from practising their cultural and religious rights become religious intolerance that violates basic principles of human rights. Fundamental human rights demand the right for all people throughout the world to live in a safe and healthy environment free from disproportionate toxic burdens and discriminatory treatment. Yes, this is a life-and-death situation - not only for indigenous peoples, but for all people, all races, all nationalities, and for the biodiversity of the planet."

4. From 28 October to 1 November 1999 indigenous peoples of the Turtle Island (North America) gathered for the "Circles of Wisdom" Native Peoples/Native Homelands Climate Change Workshop in Albuquerque, New Mexico, within what is known as the United States. The indigenous peoples of North America sent over 180 delegates to share ideas on the impact of climate change and climate variability on indigenous peoples and all life on Mother Earth. This historic gathering enabled a meeting between the indigenous elders, government representatives, environmentalists, educators, community leaders and United States scientists involved in identifying the impacts of climate change. The gathering provided teaching and a reminder to the scientists working on climate change issues that these things were foreseen and that global warming is being caused by unsustainable technologies and developments throughout the world.

5. The indigenous participants in the gathering adopted the Albuquerque Declararation on Climate Change, excerpted below. The Declaration was submitted for consideration at the Fourth Conference of the Parties of the United Nations Framework Convention on Climate Change held in Buenos Aires, Argentina, from 2 to 13 November 1998.

Alburqueque Declaration on Climate Change

(excerpts)

A growing body of western scientific evidence now suggests what indigenous peoples have expressed for a long time: life as we know it is in danger. We can no longer afford to ignore the consequences of this evidence.

There is a direct relationship between the denial of indigenous peoples' land and water rights, along with the appropriation without consent of indigneous peoples' natural resources, and the causes of global climate change

today. Examples include deforestation, contamination of land and water by pesticides and industrial waste, toxic and radioactive poisoning, military and mining impacts.

In June 1997, more than 2,000 U.S. scientists, from over 150 countries, including Nobel laureates, signed the Scientists' Statement on Global Climate Disruption which reads, in part, the "accumulation of greenhouses gases commits the sacred earth irreversibly to further global climate change and consequent ecological, economic, social and spiritual disruption" (Intergovernmental Panel on Climate Change, December 1995). Climate imbalance will cause the greatest suffering to the idigenous peoples and most pristine ecosystems globally.

Within the next 20 years, temperatures over land areas of North America, Europe and northern Asia will increase as much as 5 to 15 degrees Fahrenheit over today's normal temperatures, well in excess of the global average (IPCC report 1998). This increase in temperature will cause the sea level to rise (5-25 feet over the next 500 years), drying out North America's soil moisture (20-50%), and result in major increases in the summer heat index (10-15 degrees F).

The burning of oil, gas, and coal ("fossil fuels") is the primary source of human-induced climate change (...) The mining and drilling for coal, oil, and gas, as well as other mineral extractions results in substantial local environmental consequences, including severe degradation of air, forests, rivers, oceans and farmlands. Cultural impacts, forced removal, land appropriation, destruction of sacred and historically significant areas, breakdown of indigenous social systems, and violence against women and children are too often the outcomes of fossil fuel development on indigenous peoples. Fossil fuel extraction areas are home to some of Mother Earth's last and most vulnerable indigenous populations, resulting in accelerated losses of biodiversity, traditional knowledge, and ultimately in ethnocide and genocide.

We request that the potential consequences of climate imbalance for indigenous peoples and our environments, economies, culture, place and role in the natural order be addressed by:

1. Establishing and funding an inter-sessional open-ended working group for indigenous peoples within the Conference of the Parties (COPs) of the United Nations Framework Convention on Climate Change (FCCC).

2. Providing for case studies within the framework of FCCC that would allow for assessing how climate changes affect indigenous peoples and local communities in different regions; assessing the impact of climate changes on flora and fauna, freshwater and oceans, forestry, traditional agricultural practices, medicinal plants and other biodiversity that impact subsistence and land-based cultures of indigenous peoples; and other case studies that would provide a clearer understanding of all effects and impacts of climate change and warming upon indigenous peoples and local communities.

3. Acknowledging that indigenous peoples have the right, responsibility and expertise to participate as equal partners at every level of

decision-making, including needs assessments and case studies, within national and international policy-making activities concerning climate change impacts, their causes and solutions.

4. Establishing, within the FCCC, protocols that would actively promote international energy-efficient and sustainable forms of development, including the widespread use of appropriately scaled solar energy and renewable energy technologies as well as models of sustainable agricultural and forestry practice.

5. Mandating a moratorium on new exploration and projects for extraction of fossil fuel reserves in pristine areas. Exploration and development in the traditional territories of indigenous peoples of the world must be done with the full consent of indigenous peoples, respecting their right to decline a project that may adversely impact them.

6. Imposing a legally binding obligation to restore all areas already affected by oil, gas, and coal exploration and exploitation by the corporations or public entities that are responsible. This restoration must be done such that indigenous peoples can continue traditional uses of their lands.